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March 12, 1997

Via Hand Delivery
Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PR Docket 93-144 (800 MHz Radio Services);
FCC Staff White Paper on Private Land Mobile Radio Services;
FCC Staff White Paper on Market Based Spectrum Policy;
Response and Comment of Duke Power Company;
NOTICE OF EXPARTE CONTACT

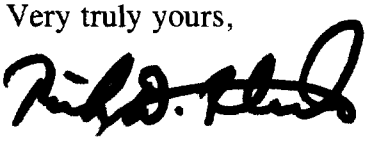
Dear Mr. Caton:

In accordance with Section 1.1206 of the Commission's rules, this will provide notice that a written presentation concerning the above-captioned proceedings was transmitted on this date to Chairman Reed E. Hundt, Commissioner Rachelle B. Chong, Commissioner Susan Ness, Commissioner James H. Quello and Michelle Farquhar, Chief of the Wireless Telecommunications Bureau.

The presentation was made on behalf of Duke Power Company ("Duke"). The points raised in the presentation reflect positions taken by Duke Power previously in the 800 MHz radio proceeding and also express opinions on the recently released Staff White Papers dealing with Private Land Mobile Radio Services and Market-Based Spectrum Policy approaches. A photocopy of these presentations is attached hereto for inclusion in the Commission's files.

It is believed that this correspondence is sufficient and in proper form for its intended purpose. Should the Commission have any questions or concerns about this submission, however, kindly contact the undersigned.

Very truly yours,



Rick D. Rhodes

RDR/tt
Enclosures
cc(w/enclosures): Chairman Reed E. Hundt
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Commissioner James H. Quello
Michelle A. Farquhar, Chief - Wireless Telecommunications Bureau
W. Wallace Gregory, Jr., Esq.
David A. Fulmer, P.E.

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Legal Department
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DUKE POWER

March 10, 1997

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Re: FCC Staff White Paper on Private Land Mobile Radio Services;
FCC Staff White Paper on Market Based Spectrum Policy;
RESPONSE AND COMMENT OF DUKE POWER COMPANY

Dear Mr. Quello:

Duke Power Company ("Duke") hereby provides its comment on both the recently released staff White Papers on private land mobile radio services ("PLMRS")[1] and market-based spectrum policy.[2]

Duke very much appreciates your past support on spectrum issues, Commissioner Quello. As has been expressed in meetings with our representatives and your Senior Legal Advisor, Rudy Baca, there are times when an auction is not the optimal method for assignment of spectrum. While Duke has no quarrel with the use of auctions for purely commercial services, there are, as you have said on numerous occasions, some situations in which other factors make auctions an undesirable approach. One of these instances is when the safety of the public is at stake. Even those who most strongly support auctions have agreed that where safety factors are involved, auctions may not be indicated. This is especially true with respect to Duke's lifeline

1 *Private Land Mobile Radio Services: Background; Staff White Paper*; Federal Communications Commission-Wireless Telecommunications Bureau (December, 1996).

2 *Using Market-Based Spectrum Policy To Promote the Public Interest*; co authors Gregory L. Rosston and Jeffrey S. Steinberg (January 1997).

telecommunications system. Therefore, we remain seriously concerned--as you are--that the present and future needs of our internal safety-oriented telecommunications system be taken into account as the Commission performs its public interest analysis.

Duke Power is particularly interested in the Commission's spectrum policies as they relate to private radio system licensees in the 800 MHz spectrum range. In compliance with the PLMRS requirements of various state and federal regulators, and with the active encouragement of earlier FCC licensing policies, Duke has constructed and now operates one of the nation's largest private internal 800 MHz radio systems. This system has operated successfully since the mid-1980's and it provides Duke with "lifeline" telecommunication facilities. While Duke's business interests undoubtedly are advanced by the telecommunications capabilities provided by this system, the system was driven by service and safety, not profit. The planning and construction of this system was a tremendously expensive and burdensome undertaking for Duke, and the prime impetus for construction of the system was Duke's belief that safety and/or emergency traffic needs justified a major capital investment in 800 MHz facilities to ensure that adequate and reliable telecommunications capabilities would be available at all times. Thus, Duke has a tremendous interest in the Commission's adoption of policies regarding spectrum--particularly when policies are adopted which affect licensing of PLMRS systems in the 800 MHz spectrum range. In light of Duke's special interest in the Commission's 800 MHz policies, Duke wishes to respond to both of the recently released White Papers, as both potentially impact Duke's telecommunication operations.

Wireless Bureau PLMRS White Paper

At the outset, Duke wishes to assure the Commission that it is in agreement with the predominant theme of the Wireless Telecommunications Bureau's background paper. The paper appears to be a fair and balanced attempt to inform the Commission about the development and status of private land mobile systems and the problems which would be faced by PLMRS licensees should the Commission modify its PLMRS licensing methodologies.

Specifically, Duke agrees with the Commission's Wireless Telecommunications Bureau staff that:

- Some users of PLMRS spectrum have important safety and emergency responsibilities which are met through PLMRS systems;

- CMRS dispatch offerings will be quite limited and CMRS systems will be unable to provide wide area "custom-tailored" services to meet the needs and responsibilities of large system licensees with safety responsibilities like Duke;

- For some private licensees like Duke, high telecommunication system reliability levels are mandated; and the licensee operates the system, in part, because of requirements by state and/or federal agencies;

- Large scale safety-oriented systems like Duke's are comparatively few in number; however, should the Commission change the licensing paradigm, these systems will face serious consequences;

- It is doubtful whether CMRS systems ever will fully meet the needs of systems like Duke's in a meaningful way;

- The Duke system and other similar systems represent a specialized market with limited commercial appeal--thus CMRS licensees will have little incentive to cater to the special needs of such entities. This is particularly true with regard to system "emergency override" needs and reliability level requirements, as well as adequate signal coverage, particularly for thinly populated rural areas which have minimal commercial appeal;

- Licensees such as Duke have unique needs for full control of their systems to ensure message override capabilities and priority service restoration during emergencies which are not uncommon;

- They also have special needs for both capacity and reliability during emergency situations which CMRS operators may not be able to provide in the foreseeable future;

- Duke agrees that many licensees of smaller 800 MHz systems will be able to migrate to CMRS because of practicality and the availability of service and cost savings. However, systems like Duke's will be unable to do so;

- Thus, Duke's system and other large scale similar systems will, with certainty, "buck the trend" anticipated by the Commission in migration of PLMRS systems to CMRS operations.

While Duke agrees with the Staff on many points, we must once again remind you that our system does not "fit the mold" of the typical smaller SMR system, and it will be extremely difficult for us to meet our public interest responsibilities without maintaining our own adequate and reliable telecommunications facilities for the long term.

Market-Based Spectrum Policy White Paper

Of the two White Papers, we find the potential impact of the second White Paper to be considerably more alarming and to pose significantly greater harm to our telecommunication operations. While Duke agrees with the general premise that spectrum auctions can help recover the value of spectrum for the public, other considerations, which in some instances militate against auctions, are given too short shrift in the analysis. Duke does not disagree with the use of auctions for licensing purely commercial systems. In fact, Duke has invested in spectrum through the Commission's earlier broadband PCS auctions, and we admit that market forces are sometimes the best means by which to allocate commercial resources.

Nevertheless there are instances where the marketplace cannot properly allocate resources because of external factors. As the Paper's authors point out, where marketplace failures occur, other mechanisms to assign spectrum have been suggested. Duke's internal, safety-oriented 800 MHz telecommunications system is a classic case where market forces cannot be relied upon to serve the public interest. Duke simply cannot outbid commercial interests for spectrum to maintain its internal system any more than can public safety system licensees without obtaining regulatory approval for what would be an onerous rate increase on all our ratepayers--in effect a new harsh tax on the public we serve. Duke and similarly situated entities are not, as the authors seem to believe, trying to pressure the Commission to resist market forces in order to protect private interests. Rather, Duke is asking the Commission to make an exception from the use of pure market forces to dedicate spectrum in the public interest for public utility safety-oriented operations just as the Commission does for public safety licensees. The Commission must ensure that the present and future needs of safety-oriented licensees are met, even if the Commission ultimately decides to employ auctions as its primary licensing method for commercial services.

Duke strongly disagrees with the public benefit analysis method utilized by the Paper's authors. We adamantly disagree that subsidies to the public safety licensees to allow them to bid at auctions for spectrum to expand their systems is a policy improvement over having spectrum "set aside" for such purposes. Additionally, Duke disagrees that special treatment should be granted only to public safety licensees. The Commission must recognize that a limited number of internal private systems do have public safety-oriented responsibilities which cannot be dismissed.

Unfortunately, the authors do not take the safety needs served by these systems into account. In the licensing scheme they suggest, Duke would be forced to bid against commercial players at auction and pay premiums for spectrum access to accommodate the continuing needs of its system. In such a scenario, the only losers would be captive rate payers who ultimately will have to foot the bill through higher utility rates, because Duke has no choice other than to operate high-grade telecommunications systems to safely perform its public duties. Thus, we are convinced that the Commission can--and must-- provide a narrowly tailored policy establishing adequate spectrum set-asides for public safety and safety-oriented systems to ensure their continued ability to perform critical telecommunications functions.

The Commission must not only provide for continued operations of such systems but must also provide adequate spectrum resources for system upgrades and/or expansion where necessary. For example, Duke currently has a need to modify its 800 MHz facility serving the Anderson, South Carolina region. This need is dictated purely through unforeseeable circumstances beyond Duke's control which have created the need for the provision of electrical power in several locations which, until recently, were largely unpopulated and had no need for electric power. Due to population growth and demographic shifts, Duke now must serve suburban residential developments as well as an industrial development zone located in the area. But for the Commission's issuance of a Special Temporary Authority, this large scale power provision activity would now be taking place without adequate telecommunication capabilities. Nonetheless, Duke has been unable, to date, to finalize the modification of its system license to provide the necessary long term signal coverage because of the

Commission's freeze on all 800 MHz applications that propose to expand a current system's footprint. The reliability of our service to new customers in South Carolina has been impaired as a result.

In order to avoid future repetitions of such potentially dangerous situations, the Commission must continue to ensure adequate spectrum availability for systems like Duke's. Therefore, the Commission should not require any safety-oriented incumbent licensee operations to move from their current frequency assignments except on a purely voluntary basis. Moreover, to ensure that unforeseeable future system needs can be met, the Commission must maintain at least a minimal spectrum reserve in the 800 MHz spectrum range where only safety-oriented licensees will be eligible to acquire additional spectrum as needed. One possibility would be for the Commission to remove all commercial licensees from the current Industrial/Land Transportation pool frequencies as well as the public safety frequencies and to open these frequencies as a future spectrum reserve for a tightly controlled limited number of eligible entities with safety responsibilities such as Duke. Additionally, where voluntary spectrum exchanges take place between safety-oriented licensees and new commercial entities, replacement spectrum should not be taken from any safety-oriented spectrum reserves. Further, should the Commission ultimately decide that it will demand migration of safety-oriented systems, it must still provide the necessary future spectrum reserve and for purposes of the migration must provide special treatment to licensees along the lines as that given to public safety entities in the 2 GHz relocation proceeding.[3]

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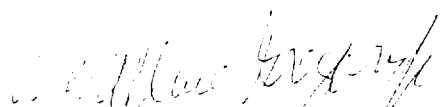
3 *In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*; Docket No. 92-9, RN-7981, RN-8804, *Second Memorandum Opinion and Order*, FCC 94-303, (adopted: November 28, 1994; released December 2, 1994).

Duke asks the Commission not to adopt spectrum policies which would cripple its effort to serve the public, simply for the sake of quick one-time generation of federal revenues. Duke realizes the Commission is under pressure to help raise revenues for the federal treasury, but Congress has told the Commission that its decisions may not be guided by revenue maximization alone. No need for additional federal revenues, no matter how pressing, can be more important than the safety of the public.

Respectfully submitted,



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MARY LYNNE GRIGG
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DUKE POWER

March 10, 1997

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Re: FCC Staff White Paper on Private Land Mobile Radio Services;
FCC Staff White Paper on Market Based Spectrum Policy;
RESPONSE AND COMMENT OF DUKE POWER COMPANY

Dear Mrs. Ness:

Duke Power Company ("Duke") hereby provides its comment on both the recently released staff White Papers on private land mobile radio services ("PLMRS")[1] and market-based spectrum policy.[2]

We realize, Commissioner Ness that you favor auctioning spectrum where practicable and that you have recently expressed serious concerns about the timing element with regard to authorization of wide-area commercial SMR systems as well as the impact of further delay on commercial wide area SMR operations. Nevertheless, as Duke telecommunications personnel have expressed in meetings with you and your Senior Advisor David Siddall, auctions are not the answer in every instance. In fact, even the most fervid proponents of auctions have noted that in certain instances--such as where the public safety is concerned--marketplace failure makes auctioning spectrum a less desirable approach. As private internal facilities ensure the safety of

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the public, we are most concerned that the needs of our telecommunications system be taken fully into account during the Commission's public interest deliberations.

Duke Power is particularly interested in the Commission's spectrum policies as they relate to private radio system licensees in the 800 MHz spectrum range. In compliance with the PLMRS requirements of various state and federal regulators, and with the active encouragement of earlier FCC licensing policies, Duke has constructed and now operates one of the nation's largest private internal 800 MHz radio systems. This system has operated successfully since the mid-1980's and it provides Duke with "lifeline" telecommunication facilities. While Duke's business interests undoubtedly are advanced by the telecommunications capabilities provided by this system, the system was driven by service and safety, not profit. The planning and construction of this system was a tremendously expensive and burdensome undertaking for Duke, and the prime impetus for construction of the system was Duke's belief that safety and/or emergency traffic needs justified a major capital investment in 800 MHz facilities to ensure that adequate and reliable telecommunications capabilities would be available at all times. Thus, Duke has a tremendous interest in the Commission's adoption of policies regarding spectrum--particularly when policies are adopted which affect licensing of PLMRS systems in the 800 MHz spectrum range. In light of Duke's special interest in the Commission's 800 MHz policies, Duke

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Specifically, Duke agrees with the Commission's Wireless Telecommunications Bureau staff that:

- Some users of PLMRS spectrum have important safety and emergency responsibilities which are met through PLMRS systems;

- CMRS dispatch offerings will be quite limited and CMRS systems will be unable to provide wide area "custom-tailored" services to meet the needs and responsibilities of large system licensees with safety responsibilities like Duke;

- For some private licensees like Duke, high telecommunication system reliability levels are mandated; and the licensee operates the system, in part, because of requirements by state and/or federal agencies;

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- The Duke system and other similar systems represent a specialized market with limited commercial appeal--thus CMRS licensees will have little incentive to cater to the special needs

of such entities. This is particularly true with regard to system "emergency override" needs and James reliability level requirements, as well as adequate signal coverage, particularly for thinly populated rural areas which have minimal commercial appeal;

- Licensees such as Duke have unique needs for full control of their systems to ensure message override capabilities and priority service restoration during emergencies which are not uncommon;

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While Duke agrees with the Staff on many points, we must once again remind you that our system does not "fit the mold" of the typical smaller SMR system, and it will be extremely difficult for us to meet our public interest responsibilities without maintaining our own adequate and reliable telecommunications facilities for the long term.

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Of the two White Papers, we find the potential impact of the second White Paper to be considerably more alarming and to pose significantly greater harm to our telecommunication operations. While Duke agrees with the general premise that spectrum auctions can help recover the value of spectrum for the public, other considerations, which in some instances militate against auctions, are given too short shrift in the analysis. Duke does not disagree with the use of auctions for licensing purely commercial systems. In fact, Duke has invested in spectrum through the

Commission's earlier broadband PCS auctions, and we admit that market forces are sometimes the best means by which to allocate commercial resources.

Nevertheless there are instances where the marketplace cannot properly allocate resources because of external factors. As the Paper's authors point out, where marketplace failures occur, other mechanisms to assign spectrum have been suggested. Duke's internal, safety-oriented 800 MHz telecommunications system is a classic case where market forces cannot be relied upon to serve the public interest. Duke simply cannot outbid commercial interests for spectrum to maintain its internal system any more than can public safety system licensees without obtaining regulatory approval for what would be an onerous rate increase on all our ratepayers--in effect a new harsh tax on the public we serve. Duke and similarly situated entities are not, as the authors seem to believe, trying to pressure the Commission to resist market forces in order to protect private interests. Rather, Duke is asking the Commission to make an exception from the use of pure market forces to dedicate spectrum in the public interest for public utility safety-oriented operations just as the Commission does for public safety licensees. The Commission must ensure that the present and future needs of safety-oriented licensees are met, even if the Commission ultimately decides to employ auctions as its primary licensing method for commercial services.

Duke strongly disagrees with the public benefit analysis method utilized by the Paper's authors. We adamantly disagree that subsidies to the public safety licensees to allow them to bid at auctions for spectrum to expand their systems is a policy improvement over having spectrum "set aside" for such purposes. Additionally, Duke disagrees that special treatment should be granted only to public safety

licensees. The Commission must recognize that a limited number of internal private systems do have public safety-oriented responsibilities which cannot be dismissed.

Unfortunately, the authors do not take the safety needs served by these systems into account. In the licensing scheme they suggest, Duke would be forced to bid against commercial players at auction and pay premiums for spectrum access to accommodate the continuing needs of its system. In such a scenario, the only losers would be captive rate payers who ultimately will have to foot the bill through higher utility rates, because Duke has no choice other than to operate high-grade telecommunications systems to safely perform its public duties. Thus, we are convinced that the Commission can--and must-- provide a narrowly tailored policy establishing adequate spectrum set-asides for public safety and safety-oriented systems to ensure their continued ability to perform critical telecommunications functions.

The Commission must not only provide for continued operations of such systems but must also provide adequate spectrum resources for system upgrades and/or expansion where necessary. For example, Duke currently has a need to modify its 800 MHz facility serving the Anderson, South Carolina region. This need is dictated purely through unforeseeable circumstances beyond Duke's control which have created the need for the provision of electrical power in several locations which, until recently, were largely unpopulated and had no need for electric power. Due to population growth and demographic shifts, Duke now must serve suburban residential developments as well as an industrial development zone located in the area. But for the Commission's issuance of a Special Temporary Authority, this large scale power provision activity would now be taking place without

adequate telecommunication capabilities. Nonetheless, Duke has been unable, to date, to finalize the modification of its system license to provide the necessary long term signal coverage because of the Commission's freeze on all 800 MHz applications that propose to expand a current system's footprint. The reliability of our service to new customers in South Carolina has been impaired as a result.

In order to avoid future repetitions of such potentially dangerous situations, the Commission must continue to ensure adequate spectrum availability for systems like Duke's. Therefore, the Commission should not require any safety-oriented incumbent licensee operations to move from their current frequency assignments except on a purely voluntary basis. Moreover, to ensure that unforeseeable future system needs can be met, the Commission must maintain at least a minimal spectrum reserve in the 800 MHz spectrum range where only safety-oriented licensees will be eligible to acquire additional spectrum as needed. One possibility would be for the Commission to remove all commercial licensees from the current Industrial/Land Transportation pool frequencies as well as the public safety frequencies and to open these frequencies as a future spectrum reserve for a tightly controlled limited number of eligible entities with safety responsibilities such as Duke. Additionally, where voluntary spectrum exchanges take place between safety-oriented licensees and new commercial entities, replacement spectrum should not be taken from any safety-oriented spectrum reserves. Further, should the Commission ultimately decide that it will demand migration of safety-oriented systems, it must still provide the necessary future spectrum reserve and for purposes of the migration

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Duke asks the Commission not to adopt spectrum policies which would cripple its effort to serve the public, simply for the sake of quick one-time generation of federal revenues. Duke realizes the Commission is under pressure to help raise revenues for the federal treasury, but Congress has told the Commission that its decisions may not be guided by revenue maximization alone. No need for additional federal revenues, no matter how pressing, can be more important than the safety of the public.

Respectfully submitted,

W. Wallace Gregory, Jr., Esq.
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DUKE POWER

March 10, 1997

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

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Dear Mrs. Chong:

Duke Power Company ("Duke") hereby provides its comment on both the recently released staff White Papers on private land mobile radio services ("PLMRS")[1] and market-based spectrum policy.[2]

Certainly, Commissioner Chong, we recognize that you have a significant background in the provision of commercial mobile radio services and that you are interested in seeing that efficient methods are established for making spectrum available on a wide area basis to commercial licenses. The rapidity with which auctions could perform this task, coupled with pressures from some members of Congress to raise revenues, provide a clear impetus to you and other members of the Commission to promptly order auctions wherever possible. Nevertheless, as Duke telecommunications personnel have expressed in meetings with you and your Senior

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Advisor, Suzanne Toller, auctions are not the answer in every instance. Even those who James strongly support auctions have agreed that in certain cases, auctions are not the preferred method of spectrum assignment. This is particularly true where the public safety is involved, such as is the case with Duke's lifeline telecommunications system. Therefore, we are seriously concerned that the present and future needs of our internal safety-oriented telecommunications system be taken into account as the Commission performs its public interest analysis.

Duke Power is particularly interested in the Commission's spectrum policies as they relate to private radio system licensees in the 800 MHz spectrum range. In compliance with the PLMRS requirements of various state and federal regulators, and with the active encouragement of earlier FCC licensing policies, Duke has constructed and now operates one of the nation's largest private internal 800 MHz radio systems. This system has operated successfully since the mid-1980's and it provides Duke with "lifeline" telecommunication facilities. While Duke's business interests undoubtedly are advanced by the telecommunications capabilities provided by this system, the system was driven by service and safety, not profit. The planning and construction of this system was a tremendously expensive and burdensome undertaking for Duke, and the prime impetus for construction of the system was Duke's belief that safety and/or emergency traffic needs justified a major capital investment in 800 MHz facilities to ensure that adequate and reliable telecommunications capabilities would be available at all times. Thus, Duke has a tremendous interest in the Commission's adoption of policies regarding spectrum--particularly when policies are adopted which affect licensing of PLMRS systems in the 800 MHz spectrum range. In light of Duke's special interest in the Commission's 800 MHz policies, Duke

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Specifically, Duke agrees with the Commission's Wireless Telecommunications Bureau staff that:

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Commission's earlier broadband PCS auctions, and we admit that market forces are sometimes the best means by which to allocate commercial resources.

Nevertheless there are instances where the marketplace cannot properly allocate resources because of external factors. As the Paper's authors point out, where marketplace failures occur, other mechanisms to assign spectrum have been suggested. Duke's internal, safety-oriented 800 MHz telecommunications system is a classic case where market forces cannot be relied upon to serve the public interest. Duke simply cannot outbid commercial interests for spectrum to maintain its internal system any more than can public safety system licensees without obtaining regulatory approval for what would be an onerous rate increase on all our ratepayers--in effect a new harsh tax on the public we serve. Duke and similarly situated entities are not, as the authors seem to believe, trying to pressure the Commission to resist market forces in order to protect private interests. Rather, Duke is asking the Commission to make an exception from the use of pure market forces to dedicate spectrum in the public interest for public utility safety-oriented operations just as the Commission does for public safety licensees. The Commission must ensure that the present and future needs of safety-oriented licensees are met, even if the Commission ultimately decides to employ auctions as its primary licensing method for commercial services.

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licensees. The Commission must recognize that a limited number of internal private systems do have public safety-oriented responsibilities which cannot be dismissed.

Unfortunately, the authors do not take the safety needs served by these systems into account. In the licensing scheme they suggest, Duke would be forced to bid against commercial players at auction and pay premiums for spectrum access to accommodate the continuing needs of its system. In such a scenario, the only losers would be captive rate payers who ultimately will have to foot the bill through higher utility rates, because Duke has no choice other than to operate high-grade telecommunications systems to safely perform its public duties. Thus, we are convinced that the Commission can--and must-- provide a narrowly tailored policy establishing adequate spectrum set-asides for public safety and safety-oriented systems to ensure their continued ability to perform critical telecommunications functions.

The Commission must not only provide for continued operations of such systems but must also provide adequate spectrum resources for system upgrades and/or expansion where necessary. For example, Duke currently has a need to modify its 800 MHz facility serving the Anderson, South Carolina region. This need is dictated purely through unforeseeable circumstances beyond Duke's control which have created the need for the provision of electrical power in several locations which, until recently, were largely unpopulated and had no need for electric power. Due to population growth and demographic shifts, Duke now must serve suburban residential developments as well as an industrial development zone located in the area. But for the Commission's issuance of a Special Temporary Authority, this large scale power provision activity would now be taking place without

adequate telecommunication capabilities. Nonetheless, Duke has been unable, to date, to finalize the modification of its system license to provide the necessary long term signal coverage because of the Commission's freeze on all 800 MHz applications that propose to expand a current system's footprint. The reliability of our service to new customers in South Carolina has been impaired as a result.

In order to avoid future repetitions of such potentially dangerous situations, the Commission must continue to ensure adequate spectrum availability for systems like Duke's. Therefore, the Commission should not require any safety-oriented incumbent licensee operations to move from their current frequency assignments except on a purely voluntary basis. Moreover, to ensure that unforeseeable future system needs can be met, the Commission must maintain at least a minimal spectrum reserve in the 800 MHz spectrum range where only safety-oriented licensees will be eligible to acquire additional spectrum as needed. One possibility would be for the Commission to remove all commercial licensees from the current Industrial/Land Transportation pool frequencies as well as the public safety frequencies and to open these frequencies as a future spectrum reserve for a tightly controlled limited number of eligible entities with safety responsibilities such as Duke. Additionally, where voluntary spectrum exchanges take place between safety-oriented licensees and new commercial entities, replacement spectrum should not be taken from any safety-oriented spectrum reserves. Further, should the Commission ultimately decide that it will demand migration of safety-oriented systems, it must still provide the necessary future spectrum reserve and for purposes of the migration